STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

AXAT S. JANI, M.D.

FINAL ORDER

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") on June 30, 2005 upon the Attorney General's filing of a notice of motion and a supporting brief seeking the entry of summary decision in this matter and seeking the entry of an Order revoking or suspending the license of respondent Axat Jani, M.D. to practice medicine in the State of New Jersey. After receiving briefs from the parties, and thereafter entertaining oral argument of counsel on September 14, 2005, we have unanimously concluded that cause exists to grant the Attorney General's motion for summary decision, as it is clear and beyond dispute that respondent was criminally convicted of the second degree offense of Health Care Claims Fraud, in violation of N.J.S.A. 2C:21-4.3(a), and further clear and beyond dispute that the conviction and the facts upon which that conviction was based, sworn to under oath by respondent when he appeared before the Honorable Michael J. Nelson on January 6, 2003 (when Dr. Jani entered his guilty plea), constitute bases upon which the Board may take disciplinary action against respondent.

Additionally, after considering the evidence presented and the testimony and documents offered at the mitigation hearing which was also held on September 14, 2005, we have concluded that cause exists to suspend the license of respondent Axat Jani, M.D., to practice medicine and surgery in the State of New Jersey for five years, two years of which are to be served as a period of active suspension and the remaining three years of which are to be stayed and served as a period of probation[1]; to impose a $10,000 monetary penalty and assess costs (attorneys fees and investigative costs) in an aggregate amount $10,405.57; to require that respondent complete an ethics course and 400 hours of community service; and to reserve the right to impose such conditions as we may deem to be reasonable and/or necessary upon respondent during the period of probation (said conditions to be determined following an appearance by respondent before a Committee of the Board prior to any resumption of medical practice during the period of probation). We set forth below the procedural history of this matter; the findings upon which we base our entry of summary decision and our reasons for rejecting the arguments made by respondent that we would be precluded from suspending or revoking his license based on the Double Jeopardy Clause; a summary of the

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[1] The two year period of active suspension shall be deemed to have commenced on October 15, 2004, the date that the Superior Court sentenced Dr. Jani to terms which included the suspension of his medical license for a minimum period of one year.

mitigation evidence that was presented; and our reasoning for the determinations we have made as to penalty to be imposed in this case.

Procedural History

This matter was initially opened before the Board on May 6, 2005, upon the filing of a Administrative Complaint by the Attorney General of New Jersey, seeking the suspension or revocation of the license of respondent Axat Jani, M.D. (see S-2 in evidence). The Attorney General alleged within the administrative complaint that, on November 8, 2002, the Grand Jurors of and for the State of New Jersey, in the New Jersey Superior Court, Law Division - Criminal, Essex County, charged respondent in a superseding indictment with one count of second degree Theft by Deception, in violation of N.J.S.A. 2C:20-4a and N.J.S.A. 2C:2-6; one count of third degree Medicaid Fraud, in violation of N.J.S.A. 30:4D-17(a) and N.J.S.A. 2C:2-6; and one count of second degree Health Care Claims Fraud, in violation of N.J.S.A. 2C:21-4.3(a) and N.J.S.A. 2C:2-6. The complaint further detailed that, on January 6, 2003, respondent pled guilty before the Honorable Michael J. Nelson, J.S.C., to second degree Health Care Claims Fraud, in violation of N.J.S.A. 2C:21-4.3(a).[2]

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[2] N.J.S.A. 2C:21-4.3(a) provides:

A practitioner is guilty of a crime of the second degree if that person knowingly commits health care claims fraud in the course of providing professional services. In

The Attorney General recounted in the complaint that, on October 15, 2004, respondent was sentenced to four years in State prison and fined $10,000 (respondent was also ordered to pay a $1,000 VCCB fine, $75 SNSF fine, and $30 LETF fine). The criminal sentence included additional terms that respondent was to be debarred for five years from Medicaid and any involvement with Medicaid-related programs, and a term that his medical license was to be suspended for a minimum period of one year. The Attorney General alleged that grounds for disciplinary action by the Board, based both on the conviction and the statements that respondent made when entering his plea, existed pursuant to N.J.S.A. 45:1-21(b) (use of dishonesty, fraud, deception or misrepresentation); 45:1-21(e) (professional or occupational misconduct); 45:1-21(f) (conviction of a crime of moral turpitude and a crime relating adversely to the practice of medicine) and 45:9-6 (failure to demonstrate good moral character).

Dr. Jani, who is represented in this matter by Robert J. Conroy, Esq., filed an answer to the complaint on June 6, 2005 (see S-8 in evidence). Therein, Dr. Jani admitted the essential allegations of the complaint; namely, that he had been indicted, had pled guilty to second degree Health Care Claims Fraud, in

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addition to all other criminal penalties allowed by law, a person convicted under this subsection may be subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained.

violation of N.J.S.A. 2C:21-4.3(a) and had been sentenced as detailed in the complaint. Following the Attorney General's filing of the motion for summary decision, respondent submitted a certification dated August 17, 2005 (to which were appended exhibits to include numerous letters of support for Dr. Jani) and a letter brief dated August 18, 2005. Respondent argued in his brief that additional sanctions would violate the Double Jeopardy clause of the United States Constitution, and that the Board was precluded from ordering any further suspension or the revocation of respondent's license because the criminal sentence meted out in Superior Court included a provision that Dr. Jani's license to practice medicine was to be suspended for a period of not less than one year. Respondent additionally argued that revocation was inappropriate in a case where no patients were harmed.

Finally, respondent suggested in his certification that the plea agreement was "incomplete" and "not necessarily properly reflective of what actually transpired." Respondent claimed in his certification that although the criminal complaint had alleged that he worked at the Smith Street Clinic from January 1998 to October 1998, he was during that time period actually employed by Pinnacle/HIP Medical Group in Eatontown initially and later in Paramus, and that he in fact had worked part time at the Smith Street Clinic for only a three month period between September 1997 and November 1997. He also claimed that although the complaint

alleged there had been no patients, in fact initially there were patients (who unbeknownst to Dr. Jani were "members of the fraud scheme") and that he had been "given what appeared to be patient charts with lab work and test results to review." Respondent additionally claimed that the number of prescriptions he wrote was several hundred (rather than thousands), that any charges that he provided Medicaid beneficiary numbers to anyone were false and baseless, and that he was not a "pivotal" person in the scheme or clinic. Dr. Jani claimed that he accepted the plea deal and accepted his responsibility and criminal penalty "because [he knew] what [he] did was wrong."

The Attorney General submitted a reply brief dated August 29, 2005, responding to the legal arguments advanced by respondent. Deputy Attorney General Krier also argued that Dr. Jani's certification was clearly at odds with the statements that he made under oath when he appeared in Superior Court, and urged that the Board not consider such statements under principles of estoppel.

This matter was set down for oral argument on the motion for summary decision before the Board on September 14, 2005. The parties were advised that, in the event the Attorney General's motion for summary decision was granted, a mitigation hearing would be held immediately following the Board's consideration of the

summary decision motion.[3] On September 14, 2005, Deputy Attorney General Siobhan B. Krier appeared for the Attorney General, and respondent appeared, represented by Robert J. Conroy, Esq.

The Attorney General predicated her case on the following documents, all of which were stipulated into evidence:

S-1 Judgment of Conviction, in State v. Axat Jani, dated October 15, 2004.

S-2 Administrative Complaint In the Matter of Axat S. Jani filed with the Board on May 6, 2005.

S-3 Transcript of Guilty Plea in State v. Axat Jani, entered before Hon. Michael J. Nelson, J.S.C., January 6, 2003.

S-4 Transcript of Sentencing in State v. Axat Jani before Hon. Michael J. Nelson, October 15, 2004.

S-5 Indictment in State of New Jersey v. Shahid Khawaja, Milton Barasch and Axat Jani, Superior Court Docket Number 02-11-00185-S, filed November 8, 2002.

S-6 Plea Form completed by Axat Jani dated January 6, 2003.

S-7 Criminal Consent Order of Suspension in State v. Axat Jani, dated October 15, 2004.

S-8 Answer to Administrative Complaint In the Matter of Axat Jani, M.D. filed with the Board on June 6, 2005.

Respondent in turn relied on his certification and the written and oral arguments of his counsel.

Determination to Grant Motion for Summary Decision

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[3] Board member George Ciecanowski, M.D., recused from participation in this matter.

Upon review of the written submissions and consideration of oral argument of the parties, we unanimously conclude that cause exists to grant the Attorney General's motion for summary decision in this matter. Simply stated, there are no genuine issues of material fact in this matter, and the Attorney General is entitled to judgment as a matter of law. Specifically, it is beyond dispute that respondent was convicted of second-degree Health Care Claims Fraud in the Superior Court on October 15, 2004 (see Judgment of Conviction, S-1 in evidence). Also beyond dispute is the fact that respondent was sentenced to terms which included a 4 year period of incarceration, a $10,000 fine, additional VCCB, SNSF and LETF assessments totaling $1,105, a five year debarment from Medicaid practice and any involvement with Medicaid related programs, and the suspension of his medical license for a minium period of one year (see S-1, S-7).

The facts which formed the predicate for Dr. Jani's conviction are similarly not subject to genuine dispute. Rather, the pertinent facts can be readily gleaned from review of the sentencing transcript and plea transcript, and the sworn statements that Dr. Jani then made which formed the factual basis upon which Judge Nelson accepted his guilty plea. When entering his guilty plea, Dr. Jani swore under oath that he was employed at the Smith Street Clinic between January and October of 1998 (S-3, p.9, 10). Dr. Jani initially saw patients at the clinic, but thereafter

patients stopped coming to the clinic (S-3, p. 10; S-4, p. 5-6). Dr. Jani nonetheless kept writing prescriptions for patients that he did not see and knew nothing about (S-3; p. 10, 18). Rather, he wrote prescriptions from a "list" of names that was given to him from the manager of the clinic, a non-physician, and he would simply write what he was told. (S-3, p.10).

Dr. Jani admitted communicating with a pharmacist involved in the scheme, Milton Barasch, who told Dr. Jani "what to write and how to write and how to change the prescription around." (S-3, p.11; see also S-3, p. 12, S-4, p.8). Dr. Jani admitted under oath that he wrote hundreds of fraudulent prescriptions (50 to 100 per week) primarily for expensive HIV related medications (S-3, p. 13, 14; S-4, p. 8) in an aggregate amount over $75,000 (S-3, p. 14). Dr. Jani additionally admitted, when entering his plea, that he wrote the prescriptions without following basic criteria and standards for writing prescriptions (to include seeing patients and having basic information before writing the prescription) (S-3, p. 18), and admitted that he knew at the time of his conduct that what he was doing was illegal. (S-3, p. 11).[4]

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[4] At the time that he entered his guilty plea, respondent gave the following testimony under oath (S-3 in evidence; pages 9--22 through 18 -- 23):

Q. Dr. Jani, were you, between January 17th, 1998 and October 1st, 1998, did you work at a clinic?

A. Yes, I did.

Q. What is the name of that clinic?

A. 10 Smith Street Clinic.

Q. And what was your position at that clinic?

A. I was a physician. Basically I wrote prescriptions. Initially saw patients. When no more patients, just write prescriptions.

Q. In other words, would you be using your prescription pad to write? You were given a list of people to just write prescriptions on?

A. Yes.

Q. Without ever seeing those people?

A. Yes.

Q. And without knowing who they were?

A. Yes.

Q. And who gave you the lists of names and prescriptions to write? Who told you what to write?

A. Peggy J-U-I-S-T-O-N. J-U-I-S-T-O-N-. Peggy was the first name.

Q. She would write that?

A. She would give me the list and I would just write prescriptions as they told me what to write.

Q. Do you know where the prescriptions were taken after you wrote them?

A. No, I don't.

Q. Do you know of a pharmacy where they went to?

A. I don't.

Q. And--

A. I mean --

Q. What?

A. I was contacted by pharmacists.

Q. Who was that?

A. I believe Milton Barasch.

Q. I see. Was he part of this scheme also?

A. Yes. He was the pharmacist. We spoke maybe twice and once I went to that pharmacy, which was on Frelinghuysen Drive, I guess -- Road. They took me in and told me what to write and how to write and how to change the prescription around.

Q. When you did all this did you know what you were doing was illegal?

A. Yes.

THE COURT: Thank you

Q. This was done between January 17th, 1998 and October 1st, 1998; is that correct?

A. Yes.

...

By Mr. Ondris:

Q. Actually it was going on quite a while before that. It included those dates?

A. It included those dates.

...

Q. These prescriptions you were writing, approximately how many a week?

A. Maybe 50 to 100.

Not only are the relevant facts not subject to genuine dispute, but also it is clear that Dr. Jani's conviction and his admitted actions form a predicate upon which the Board can find that he engaged in dishonest and fraudulent conduct and professional misconduct. It is further beyond reasonable dispute

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Q. These prescriptions were for what medications?

A. Mostly H-I-V-related medications.

Q. You probably have hundreds, hundreds if not thousands, of these prescriptions?

A. I wouldn't say thousands. I'd say hundreds.

MR. ONDRIS: Your Honor, for the record, these H-I-V-medications are extraordinarily valuable. A couple of thousand dollars per prescription.

...

THE COURT: And in your training is there a standard for writing a prescription? Are you supposed to see patients?

A. For the most part, yes.

THE COURT: Have some basic information before writing the prescription?

A. Yes.

THE COURT: <u>In this case did you write prescriptions without following those criteria, sir?</u>

A. <u>Yes.</u>

[emphasis added]

that Dr. Jani's conviction was of a crime that involved moral turpitude and related adversely to the practice of medicine.

We reject respondent's claim that this Board would be precluded from taking any action against respondent on the theory that doing so would violate the Double Jeopardy Clause of the Constitution. The Double Jeopardy Clause only prohibits the "imposition of multiple criminal punishments for the same offense." Hudson v. United States, 522 U.S. 93, 99 (1997). The Double Jeopardy Clause does not prohibit an administrative agency from imposing civil sanctions upon a licensee who has already faced criminal adjudication. Id., see also State v. Womack, 145 N.J. 576 (1996), cert. denied 519 U.S. 1011 (1996). Significantly, the imposition of a further suspension or revocation of respondent's license serves a remedial function in this case, as such action would not only protect the public from a corrupt and unfit practitioner, but also maintain the integrity of the profession.

We likewise reject Dr. Jani's claim that the Board may not impose any suspension of his license beyond the one year suspension of his license which was ordered as a component of the criminal sentence imposed in the Superior Court. Dr. Jani was sentenced based on his criminal conviction for second-degree Healthcare Claims Fraud, in violation of N.J.S.A. 2C:21-4.3(a). The law provides that practitioners convicted under that section must forfeit their license and "be forever barred from the practice

of the profession unless the court finds that such license forfeiture would be a serious injustice which overrides the need to deter such conduct by others," in which case the court is to determine an appropriate period of license suspension which shall be for a period of not less than one year. N.J.S.A. 2C:51-5(a)(1).

Based on review of the sentencing transcript and of the criminal Consent Order signed by Dr. Jani, it is clear that the criminal court did not sentence Dr. Jani to a finite suspension of one year license suspension, but instead ordered that his license be suspended for a minimum period of one year. The Court was expressly aware that the Attorney General could move for an additional period of licensure suspension and/or the revocation of respondent's license before this Board. The "Consent Order of Suspension" (S-7) that was entered in the criminal proceeding, which was signed both by Dr. Jani and his criminal defense attorney, thus provided that Dr. Jani was to be suspended from the practice of medicine in the State of New Jersey for a minimum period of one year.

The terms of the Consent Order are entirely consistent with the colloquy that occurred when the Court sentenced Dr. Jani. Judge Nelson's statements (after indicating that the criminal sentence was to include a one year suspension of Dr. Jani's license) thus clearly highlight that the Court was well aware that

additional actions could be taken to impose further suspension of respondent's license:

> I'm certain that the attorney general can also make application through other means, but given whatever power this Court would have, the license would be suspended under the provision provided, as well as a five-year period of being disbarred from participating in Medicaid and Medicaid related programs. (S-4, p. 17 -- 25 to p. 18 -- 5).

Clearly, the Superior Court left open the possibility that the suspension of respondent's license could be for a period greater than one year, and that an action could be taken by the Attorney General before this Board seeking a longer period of suspension or the revocation of respondent's license. Finally, we point out that respondent's contention is belied by the express terms of the statute, given the pronouncement therein that the statute is not to limit the Board's authority.[5]

We also reject respondent's claim that this Board may not revoke respondent's license because no patients were harmed by his conduct. Given that respondent's misconduct involved writing prescriptions for non-existent patients, it is obvious that the prescriptions could not have harmed the "patients" for whom they

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[5] N.J.S.A. 2C:51-5(f) states:

> Nothing in this section shall be construed to prevent or limit the appropriate licensing agency or any other party from taking any other action permitted by law against the practitioner.

were written. Yet, we are constrained to point out that, by writing the prescriptions at issue, respondent necessarily assumed the risk that the prescriptions would be filled and that the prescribed substances could have been used by individuals without appropriate medical supervision or illicitly. Further, it is clear that respondent's commission of health care claims fraud harmed the fiscal well being of the citizens of this state, and his conduct necessarily caused harm to the medical profession as a whole, as he unquestionably violated basic standards of practice and thereby compromised the integrity of the profession.

Respondent suggests that his argument that the Board may not revoke a license in the absence of demonstrated patient harm is based on a recent Appellate Division decision, In re Zahl, A-4177-02 (App. Div. June 9, 2005). Initially, we note that the Zahl case was not a published opinion, and is therefore not precedential; additionally, we note that the New Jersey Supreme Court has granted the Attorney General's petition for certification to review the determination made by the Appellate Division in Zahl, and will thus consider the Board's contention that Dr. Zahl's fraudulent conduct fully supported an Order revoking licensure. See 185 N.J. 297 (2005).

Further, we are convinced that the Zahl case and this matter are in any event distinguishable cases, in that respondent's conduct directly implicated his practice of medicine, given that it

involved a disturbing misuse of the power to prescribe that is vested in our licensees. Respondent thus, by his own admission, wrote prescriptions for drugs without examining patients and without following the very basic standards which physicians need to follow before writing prescriptions. By doing so, respondent failed to follow basic standards of practice.[6]

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[6] In respondent's August 17, 2005 certification and in his sworn testimony before the Board during the mitigation hearing (see discussion infra), respondent disavowed the testimony that he offered before Judge Nelson (i.e., that he wrote prescriptions from lists of names that he was given without seeing the people and without knowing who they were) and instead claimed that he wrote prescriptions based on data that was in medical charts of individuals that he believed were real people diagnosed with HIV disease (but were simply too sick to come in). While we have decided not to give credence to respondent's testimony based on principles of estoppel (see discussion infra), we herein note that were we to have accepted respondent's testimony, that testimony would in turn have supported findings that respondent's prescribing practices caused harm to his patients, particularly for the class of individuals Dr. Jani claimed he was treating who were failing their antiretroviral agent regimens.

In response to questions posed by Board member Dr. Sindy Paul, Dr. Jani testified that he had occasions where he was presented with "charts" including "laboratory work" that suggested that the "patient" he was treating was failing his or her antiretroviral agent regimen (i.e., instances in which the CD4 and viral load indicated that the patient was in probable virologic failure on the antiretroviral agents). Dr. Jani stated that in such cases, he would renew prescriptions for the same antiretroviral agents that the patient had been on (see Transcript of hearing of September 14, 2005 before Board of Medical Examiners, In the Matter of Axat Jani, p. 178-180, hereinafter "T").

We would be remiss were we not to note herein that respondent's testimony suggests he engaged in a practice that would both likely have caused harm to the individual patient who received renewals from Dr. Jani and would have presented substantial public health risks. We thus point out, based on our collective knowledge and expertise, that the standard of care in 1997 for treating a

Finally, we briefly address the issue of the inconsistency between the statements that Dr. Jani made under oath when entering his guilty plea and the statements which he made in his certification (and when testifying later before the Board at the mitigation hearing, see discussion below). Dr. Jani now comes before the Board and swears under oath that the statements he made before Judge Nelson (also under oath) were false. While not denying that he wrote prescriptions without seeing patients, he now asks the Board to eschew the sworn statements he offered before Judge Nelson and instead accept a series of statements that would dramatically change the factual predicate upon which his conviction was based, to include statements he now makes that his employment at the Smith Street Clinic was for a three month period before 1998 (rather than for the period between January and October 1998); that he wrote prescriptions based on review of charts he was given, which included falsified lab work and test results (rather than having written prescriptions from nothing more than lists, knowing that his prescriptions were for non-existent individuals); and that he naively followed pharmacist Milton Barasch's advice regarding

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patient diagnosed with HIV who was on a failing medication regimen was not to renew the antiretroviral agents the patient was on, but rather was to change at least two of the medications that patient was being prescribed. Keeping a patient on failing medications would have harmed the patient by allowing the disease to continue to progress and by allowing resistant strains of HIV to develop, making it more difficult to treat the patient and increasing the potential for transmission of resistant strains of HIV (which in turn would be a public health hazard).

the propriety of writing prescriptions without seeing patients and regarding the manner in which prescriptions should be written (as opposed to following Mr. Barasch's advice because he was a knowing player in a scheme to commit healthcare fraud).

We expressly decline Dr. Jani's invitation to rewrite the facts of this matter, and instead suggest and conclude that, in reviewing this matter, we may instead rely upon the sworn statements Dr. Jani made when entering his guilty plea. We thus reject Dr. Jani's testimony before this Board (to the extent the testimony conflicts with the statements he made under oath when entering his guilty plea), and conclude that he is estopped from now attempting to disavow or contradict his prior sworn statements. See Matter of Coruzzi, 95 N.J. 571 (1984); In re Tanelli, 194 N.J. Super. 492 (App. Div. 1984), certif. denied 99 N.J. 181 (1984).

Penalty

Summary of Testimony offered at Mitigation Hearing

Following our decision to grant summary decision in this matter, we held a mitigation hearing, at which hearing respondent was afforded an opportunity to present evidence in mitigation of penalty. Respondent called twenty-seven individuals[7] to testify at the mitigation hearing, to include patients, physicians, members of

[7] A complete list of individuals who testified at the mitigation hearing is set forth in an Appendix hereto.

respondent's religious community, neighbors, former employees and family members. The mitigation witnesses uniformly testified that Dr. Jani was a caring and compassionate person and physician. Patients who testified repeatedly spoke of Dr. Jani's dedication, and referred to him as a caring, patient and knowledgeable physician, who would take whatever time might be necessary to spend with his patients. All patients who testified stated that they would return to seek Dr. Jani's care were his license to be reinstated.

The members of Dr. Jani's religious community who testified stated that Dr. Jani was a highly respected member of the Hindu religious community, who volunteered his time freely, providing both medical services to senior citizens and teaching children in the community's heritage school. Dr. Jani was repeatedly described by members of his religious community who testified as an honest, sincere, humble and helpful person, and he was praised by all who testified for his dedication to the religious community.

Dr. Jani's former receptionist, DeeAna Sharkas, testified that she never witnessed any dishonest conduct by Dr. Jani, who she described as a warm, caring and compassionate person. Ms. Sharkas stated that she never received any complaints (in her role as receptionist) from any of Dr. Jani's patients. Sandra Goldberg, who was hired to follow-up on certain medical billings for Dr.

Jani, stated that she observed no billing irregularities. A neighbor, Kathy Guerra, testified that Dr. Jani was a wonderful person who would take care of kids and senior citizens on the block.

It is clear that the many who testified (and those who wrote letters supporting Dr. Jani) uniformly viewed Dr. Jani as a compassionate physician and person who has devoted much time and effort to both his medical practice and community activities. Many who were called as mitigation witnesses conceded that Dr. Jani had made a mistake when he first started medical practice, but suggested that he had paid the price for that mistake. The mitigation witnesses repeatedly beseeched the Board to allow Dr. Jani to continue to practice medicine.

Finally, Dr. Jani testified at the mitigation proceeding. Dr. Jani's testimony, as we noted above, included statements which contradicted testimony that Dr. Jani offered when he entered his guilty plea. Dr. Jani testified before the Board that he was employed at the Smith Street Clinic between September of 1997 and December 1997 (T 147), and he stated that the testimony that he offered before Judge Nelson (i.e., that he was employed between January 17, 1998 and October 1, 1998) "did not reflect the truth." (T 163). Dr. Jani claimed that his function at the clinic was to "oversee" charts of patients with HIV as a diagnosis, and claimed that he would "review their blood works (sic) and rewrite the

renewals." (T 138-9). Dr. Jani also claimed that he initially saw people who were posing as patients, (T139); thereafter, he would be told by the clinic manager that the patient was too sick to come in, and he would simply write renewals based on information in the chart. (T 143).

Dr. Jani testified that his remuneration was limited to a salary of $50 an hour, and that he did not receive payment based on the number of prescriptions he wrote nor did he share in any of the profits of the clinic (T 144). Dr. Jani additionally testified about the actions he took to cooperate with the investigating authorities, and ultimately stated that he had accepted responsibility for his actions (T 161). The mitigation hearing concluded following Dr. Jani's testimony.[8]

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[8] In addition to testimony, the following documents were moved into evidence during the mitigation hearing:

R-1 Letter from Diane D'Alessandro Foley, criminal defense attorney working for public defenders office, in support of Dr. Jani.

S-9 Certification of Costs by Deputy Attorney General Siobhan Krier dated June 30, 2005 (re: attorneys fees).

S-10 Certification of Costs by Investigator John T. Vatasin dated December 20, 2004 (re: investigative costs).

S-11 Certification of Costs by Investigator Richard L. Perry dated December 16, 2004 (re: investigative costs).

S-12 Certification of Jon R. Powers (State Investigator employed by the Office of the

Determination as to Penalty

In fashioning an appropriate penalty to mete out in this case, we are left to balance the very stark misdeeds which respondent engaged in, which were the predicate for a criminal sentence of four years in prison[9], against the substantial mitigation showing that has been made. Initially, we find the crime which respondent pled guilty to was a crime that is particularly opprobrious and clearly relates adversely to the profession of medicine. Dr. Jani committed criminal acts which at a very minimum tear at the fabric of good medical practice. Further, we find respondent's attempt before this Board to suggest that the testimony he offered before Judge Nelson was not true to be in no small measure disingenuous and a self-serving effort to minimize his conduct before this Board long after reaching a deal

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Insurance Prosecutor dated August 29, 2005 (generally stating that information supplied by Dr. Jani regarding suspected fraud by other healthcare practitioners was, following further investigation, not found to have a basis in fact; that Dr. Jani was not promised that his cooperation in this matter would protect his medical license from administrative action; and attesting to the observation of at least one conversation between D.A.G. Mark Ondris and Dr. Jani wherein Dr. Jani was expressly told that his agreement to plead guilty would not prevent further action against his license.

[9] Respondent testified that he was confined for 102 days in prison, and thereafter released into the Intensive Supervision Program. T157.

that avoided his having to stand trial not only on the crime to which he pled guilty but on other crimes that he had been indicted upon, which, had he been found guilty, could have resulted in a far more significant criminal sentence having been imposed.

Nonetheless, it is also clear to us that respondent has, since the time he left employment at the Smith Street Clinic, built a practice where he has been able to garner the admiration and devotion of his patients, and it is also apparent that, in other aspects of his life, he has been a caring and generous individual. We are aware of no allegations that Dr. Jani has engaged in any type of inappropriate conduct since his association with the Smith Street Clinic. We are also mindful that the misconduct at the Clinic ended under any construct of events over seven years ago, and that respondent did accept responsibility before the Superior Court for his actions by entering a plea deal and ultimately serving a period of incarceration for his actions.

On balance, we are persuaded that respondent's actions warrant the imposition of a severe sanction, both for the purpose of redressing the misconduct in which respondent engaged and so as to send a clear message to the physicians of New Jersey that the fraudulent conduct in which respondent engaged is something that will neither be excused nor taken lightly by this Board. We concluded that his actions fully support a five year suspension of license. We are satisfied that an appropriate balance is struck by

requiring the first two years of the period of suspension to be served as an active period of suspension, with the remainder to be stayed and served as a period of probation. While we decline to presently fashion the terms and conditions that will apply to any practice of medicine by respondent during the period of probation, we expressly reserve the right to do so. We also conclude that respondent should be required to complete an ethics course during the period of active suspension, 400 hours of community service during the period of licensure suspension, and be assessed both a civil penalty of $10,000 and the costs (attorneys fees and investigative costs) of this proceeding.

Costs

At the time we heard this matter on September 14, 2005, we deferred making a decision upon the amount of costs and investigative fees to assess, so as to afford respondent an opportunity to submit any objections he might have to any of the costs that were sought. We then ordered that respondent submit any objections in writing not later than October 4, 2005, and that the Attorney General could then submit, within ten days, a written response to the objections. We stated that the matter would then be considered by the Board on the papers, and that the Board would determine whether any hearings to resolve factual disputes may be necessary or, if not, determine the amount of costs to be assessed. We further stated that, in the event no objections were submitted

by respondent by October 4, 2005, respondent was to be deemed to have waived any objections to the costs sought.

Respondent in fact submitted written objections to the cost application by way of letter dated September 29, 2005. Respondent argued that the certifications of costs submitted by Investigators Vatasin (S-10) and Perry (S-11) were lacking in specificity. Respondent also objected to certain entries that were included on Deputy Attorney General Krier's timesheets (the timesheets were attached as an exhibit to D.A.G. Krier's certification, S-9 in evidence), claiming that the Attorney General should not be permitted to receive cost awards for administrative tasks detailed on the time sheets (such as making requests for the sentencing transcript, updating file notes or marking calendars) or for drafting or reviewing press releases. Respondent also objected to 5.6 hours of time spent researching double jeopardy issues and claimed that the Attorney General spent excessive time (approximately 29 hours in total) preparing the motion for summary decision, brief and reply brief.

Thereafter, the Attorney General submitted a reply letter brief dated October 14, 2005. In that brief, Deputy Attorney General Krier urged that the Board not seek to "second-guess" billable time spent by the Attorney General as to do so would "negatively implicate" public policy. Deputy Attorney General Krier also argued that it is the public at large that is harmed

when a licensee against whom charges are successfully brought seeks to avoid responsibility for costs that were incurred in order to prosecute the matter, and pointed out that the statutory authority to impose attorneys fees is part of a remedial legislative scheme. D.A.G. Krier additionally argued that the attorneys fee submission made was consistent with and met all standards for fee applications set by the courts. See Rendine v. Pantzer, 141 N.J. 292 (1995); Poritz v. Stang, 288 N.J. Super. 217 (App. Div. 1996). Finally, D.A.G. Krier pointed out that many of the hours that she spent conducting research and preparing briefs in this matter were necessitated to respond to assertions that were made by respondent which ultimately were unfounded, to include the time that was billed for researching issues related to respondent's Double Jeopardy arguments. D.A.G. Krier submitted a supplemental certification providing further detail concerning the work which she performed when prosecuting this matter.

On the issue of investigative fees, the Attorney General conceded that a portion of the investigative fees that were being sought had been inadvertently included in the initial application, and withdrew her application for those fees.[10] The Attorney General revised the amount of costs that were being sought to $812.57 (and an additional expenditure of $62 for certified copies of the plea

[10] Those fees that had been sought in the Certification of John Vatasin (S-10 in evidence) were stated to have been inadvertently included in the application for costs.

and sentencing transcripts), and submitted an updated Certification of Costs of Richard L. Perry, Supervising Investigator dated October 12, 2005 which included an activity log detailing activities conducted by the Enforcement Bureau.

We reviewed the papers submitted by the parties on the cost application (to include a reply letter brief dated October 17, 2005 submitted by respondent) on October 21, 2005, and have concluded that the costs and investigative fees sought by the Attorney General are entirely reasonable and that the application for assessment of those costs and fees should be granted, with but one minor exception, in full. Initially, we are satisfied that the aggregate number of attorney hours spent in connection with the research, preparation and prosecution of the case, to include the time spent preparing moving papers and legal briefs (specifically, a total of 70.9 hours spent from March 21, 2003 to and including June 13, 2005) is reasonable. We point out that the number of hours that were spent to prosecute this matter are clearly warranted and fully supported by the import of this matter.

We decline respondent's suggestion that we should make adjustments to the number of hours that were required to prepare this matter, based on our conclusion that the aggregate number of hours spent on a matter of substantial public import were reasonable. We similarly decline respondent's suggestion that we need to scrutinize so-called "administrative" entries, as we

instead conclude that the activities detailed on the time entries appear to be properly related to the overall management of the case and, in any event, constitute a de minimus percentage of the fee application. We do, however, agree with respondent's contention that any billings for "press releases" should not be charged to respondent, and therefore deduct $40.50 (0.3 hours at $135/hour) from the attorneys fee application.[11] Finally, we conclude that the rate of $135 hour that is being sought for D.A.G. Krier's time is a reasonable rate and decline to adjust said rate (indeed, we note that respondent did not object to the rate of $135/hour sought for attorneys fees; respondent's objections were instead limited to the aggregate number of hours that were sought).[12]

We also note herein that our conclusion that the aggregate amount of attorneys fees sought in this matter is reasonable is only buttressed by the fact that the Attorney General elected not to seek to recover attorneys fees for all work that was done after June 13, 2005 in this case, or for any work that may

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[11] The specific entries which we disallow are an entry dated February 26, 2004, for 0.1 hours and an entry dated March 3, 2004 for 0.2 hours spent in an office conference with P. Kenny re: press release.

[12] The basis for the rate of $135/hour is detailed in a June 24, 2005 memorandum from Nancy Kaplan, Acting Director of the Division of Law (appended to S-9), detailing that attorneys fees for attorneys with 0-5 years of legal experience are to be recovered at a rate of $135/hour, as that rate is generally consistent with the rates paid by the State of New Jersey for the services of outside counsel.

have been performed by any attorney other than Deputy Attorney General Krier.[13] While we point out that such time could have been sought in connection with the fee application, and that the reasons that support the assessment of costs generally upon respondent would support the assessment of those additional attorneys fees upon him, we are at this time closing the record in this matter and will not hereafter allow or consider any application for additional attorneys fees. Finally, we find the amended amount of investigative costs that are sought to also be reasonable and adequately detailed in the certification of Richard L. Perry, and we assess those fees in full upon respondent.

WHEREFORE it is on this 19TH day of January, 2006

ORDERED:

1. The license of Axat S. Jani, M.D., is hereby suspended for a period of five years, the first two years of which are to be served as a period of active suspension and the remaining three years of which are to be stayed and served as a period of probation. The five year period of suspension shall be deemed to have commenced on October 15, 2004 (the date of respondent's criminal sentencing) and

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[13] It is obvious that additional attorney time was spent in the prosecution of this matter after June 30, 2005, to include D.A.G. Krier's review of respondent's reply to her summary decision motion and preparation of a reply brief, her preparation for hearing on September 14, 2005, attendance at the six hour hearing that was held before the Board on September 14, 2005, and any time spent in the preparation of a brief and certification in support of the fee application.

the active period of suspension shall continue through October 14, 2006.

2. Respondent is ordered to perform 400 hours of community service during the period of suspension, to be performed in a non-medical setting to be approved in advance by the Board, and to be performed at a rate of not less than 100 hours per year.

3. Respondent is assessed a civil penalty in the amount of $10,000, to be paid either in full within thirty days of the date of entry of this Order or pursuant to a schedule of payments, to include interest (to be set at a rate consistent with New Jersey Court Rule 4:42-11), acceptable to the Board.

4. Respondent is hereby assessed attorneys fees in the amount of $9,531.00, and is assessed investigative costs in the amount of $874.57 (for an aggregate sum of $10,405.57), which fees and costs are to be paid either in full within thirty days of the date of entry of this Order or pursuant to a schedule of payments, to include interest (to be set at a rate consistent with New Jersey Court Rule 4:42-11), acceptable to the Board.

5. Respondent shall successfully complete an ethics course acceptable to the Board, said course to be completed prior to the time that respondent resumes the active practice of medicine.

6. Prior to resuming any practice of medicine during the period of probation, respondent shall be required to appear before a Committee of the Board and then demonstrate to the satisfaction of

the Board that he is fit to resume the practice of medicine, and then further demonstrate that he has complied with all conditions of this Order. The Board reserves the right, following said appearance, to place conditions or limitations upon any practice of medicine by respondent during the period of probation, to include, without limitation, requirements that respondent's billings be subject to periodic review.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: Sindy M. Paul MD
Sindy M. Paul, M.D.
Board President